



STATEMENT

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REGARDING A HEARING ON

POROUS BORDERS AND DOWNSTREAM COSTS: THE IMPACT OF ILLEGAL
IMMIGRATION ON STATE, COUNTY, AND LOCAL GOVERNMENTS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

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San Diego County Administration Building
1600 Pacific Highway, Room 310, San Diego, California

CHAIRMAN DAVIS AND MEMBERS OF THE COMMITTEE, it is an honor for me to appear before you today to share U.S. Immigration and Customs Enforcement's (ICE's) efforts to combat illegal immigration within the interior of the United States; specifically in the areas of worksite enforcement and document and benefit fraud.

INTRODUCTION

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authority and the largest force of investigators. Our mission is to protect our Nation and the American people by targeting the people, money and materials that support terrorist and criminal activities. The men and women of ICE accomplish this by investigating and enforcing the nation's immigration and customs laws. Working throughout the nation's interior, together with our DHS and other federal counterparts and with the assistance of state and local law enforcement entities, ICE is vigorously pursuing the most egregious employers of illegal workers and the organizations that undermine our immigration system through document and benefit fraud.

In his address to the Nation on May 15, 2006, President Bush addressed both document fraud and worksite enforcement when he stated that "we need to hold employers to account for the workers they hire. It is against the law to hire someone who is in this country illegally. Yet businesses often cannot verify the legal status of their employees, because of the widespread problem of document fraud." As indicated by the President's remarks, these two areas are intertwined. Fraudulent identification documents fuel the

ability of unauthorized individuals to enter the workforce illegally, after being hired by unwitting or unscrupulous employers. For this reason, the Administration has proposed an overhaul of the employment verification system and employer sanctions program as part of the President's call for comprehensive immigration reform that includes increased border security, a robust interior enforcement program, a temporary worker program, and a way to address the estimated 11 to 12 million illegal immigrants already in the country.

THE 1986 IRCA AND LESSONS LEARNED

ICE has substantial experience as a result of its role in implementing the 1986 Immigration Reform and Control Act (IRCA). We know its strengths and shortcomings and I believe it will be beneficial to provide a quick review of worksite enforcement under IRCA.

In the past, immigration investigators, to different degrees over the course of time, focused on worksite violations by devoting a large percentage of investigative resources to enforcement of the administrative employer sanctions provisions of IRCA. The resulting labor-intensive inspections and audits of employment eligibility documents only resulted in serving businesses with a Notice of Intent to Fine (NIF) or a compliance notice. Monetary fines that were routinely mitigated or ignored had little to no deterrent effect. The results were far from effective and the process involved endless attorney and agent hours in discovery and litigation to adjudicate and resolve cases. Egregious violators of the law viewed the fines as simply a cost of doing business and therefore the

system did not serve as a true economic inducement for them to change their business model.

Moreover, while IRCA required employers to review document(s) that establish identity and employment eligibility, its compliance standard rendered that requirement meaningless and essentially sheltered employers who had intentionally hired unauthorized workers. Under the 1986 law, an employer could comply with the eligibility verification process by reviewing a document that reasonably appeared to be genuine. Employers were not required to verify the validity of a document and were not required to maintain a copy of the documents that they reviewed. The ability of the employer to rely on the facial validity of a single document, and the lack of available evidence permitting after-the-fact review of the employer's assessment, routinely prevented the government from proving that the employer knew the employee was not authorized to work. Thus, the Administration's worksite enforcement proposal requires that the employer retain copies of relevant documents and information obtained during the verification process, as well as during the subsequent employment of a worker. The law also must not allow unscrupulous employers to ignore highly questionable documentation or other facts indicative of unauthorized status.

Another detrimental result of the documentation compliance standard established under IRCA was the explosive growth in the profitable false document industry that catered to unauthorized aliens seeking employment.

WORKSITE ENFORCEMENT: A NEW AND BETTER APPROACH

ICE's current worksite enforcement strategy is part of a comprehensive layered approach that focuses on how illegal aliens get into our country, the ways in which they obtain identity documents allowing them to become employed, and the employers who knowingly hire them.

The ICE worksite enforcement program is just one component of the Department's overall Interior Enforcement Strategy and is a critical part of the Secure Border Initiative. ICE is bringing criminal prosecutions and using asset forfeiture as tools against employers of unauthorized workers rather than rely upon administrative fines as sanctions against such activity. Using this approach, ICE worksite investigations now support felony charges and not just the traditional misdemeanor worksite violations under Section 274A of the Immigration and Nationality Act.

Of course, a key component of our worksite enforcement effort targets the businesses and industries that deliberately profit from the wholesale employment of unauthorized workers. In April of 2006, ICE conducted the largest such worksite enforcement operation ever undertaken. This case involved IFCO Systems, a Houston-based pallet supply company. ICE agents executed nine federal arrest warrants, 11 search warrants, and 41 consent searches at IFCO worksite locations throughout the United States. In addition, ICE agents apprehended 1,187 unauthorized workers at IFCO worksites. This coordinated enforcement operation also involved investigative agents and officers from the Department of Labor, the Social Security Administration, the Internal Revenue

Service, and the New York State Police. The criminal defendants have been charged with conspiracy to transport and harbor unlawful aliens for financial gain (8 U.S.C. 1324 and 18 U.S.C. 371), as well as fraud and misuse of immigration documents (18 U.S.C. 1546).

In immediate response to 9/11, ICE launched several investigations to enhance national security and public safety here in California and throughout the Nation. Operations Tarmac and Glowworm are national initiatives, focused on securing the nation's airports and nuclear facilities, respectively, including several such facilities in California. Closer to home, Operation Safe Cities is an ICE Special Agent in Charge (SAC) San Diego initiative started in December of 2003 to identify and remove unauthorized employees from critical infrastructure businesses and facilities in the San Diego area, including military installations, airports, nuclear facilities and hazardous material transportation companies. This initiative includes an outreach program to educate employers on the law and its requirements with regard to employing foreign nationals in the United States. To date, the Safe Cities initiative has resulted in the review of more than 1,200 businesses in critical infrastructure industries and the removal of 537 unauthorized employees from businesses and facilities, including Camp Pendleton, the San Diego Airport, AMTRAK, the San Onofre Nuclear Reactor, Northrop Grumman, several Naval Air Stations and others. These and other nationwide critical infrastructure operations demonstrate how ICE is using immigration laws to remove potential threats from California and our Nation's most sensitive facilities.

On May 23, 2006, SAC San Diego agents apprehended 26 Mexican nationals and one Honduran national who were unauthorized workers employed by Standard Drywall, Inc. with access to Camp Pendleton. In addition, two Mexican nationals who are lawful permanent residents were arrested and placed in removal proceedings based on their past criminal convictions. The execution of the search warrants led to eight additional arrests.

In March 2005, as a result of a joint DHS/FBI intelligence report, the Operation Safe Water security initiative was launched. SAC Los Angeles agents apprehended 11 unauthorized workers employed by the Los Angeles Department of Water and Power (LADWP) and the Sanitation District of Los Angeles County (SDLA). In this case, agents conducted an initial Form I-9 Employment Eligibility Verification inspection of SDLA employees, which resulted in the apprehension of six unauthorized workers. The final inspection of approximately 7,000 Form I-9's revealed five more unauthorized workers at LADWP, who were subsequently apprehended. There was no evidence to suggest that LADWP or SDLA were engaged in unlawful employment practices.

In addition to protecting critical infrastructure, worksite enforcement combats alien smuggling. Alien smuggling is the importation of people into the United States via deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the United States and unlawfully transporting and harboring aliens already in the country. During the last few months, we have made arrests at employment agencies that served as conduits between the criminal organizations that smuggle illegal aliens into this country and the employers that willfully employ them.

Worksite enforcement also combats human trafficking. Through its worksite enforcement actions, ICE has dismantled forced labor and prostitution rings, be they comprised of Peruvian aliens in New York or Korean aliens in California. The common threads in these cases are the greed of criminal organizations and the desire of unwitting aliens to come here to work. Human trafficking cases often represent the most egregious forms of exploitation, as aliens are forced to work and live for years in inhumane conditions to pay off the debt they incur for being smuggled into the country.

In addition to all this, ICE worksite enforcement also combats trafficking in counterfeit goods, commercial fraud, financial crimes, and export violations. We leverage our legacy authorities to fully investigate these offenses, which in many cases have a nexus to the employment of unauthorized workers.

Through careful coordination of our detention and removal resources and our investigative operations, ICE is able to target the organizations unlawfully employing illegal workers, and to detain and remove the illegal workers that our agents encounter. Such actions send a strong message to illegal workers here and to foreign nationals in their home countries that they will be able to remain in the United States even if caught illegally working for one employer.

What impact will this have? Criminally charging employers who hire undocumented aliens will create the kind of deterrence that previous enforcement efforts did not

generate. We are also identifying and seizing the assets that employers derive from knowingly employing illegal workers, in order to remove the financial incentives gained from such hires.

Because the vast majority of employers do their best to comply with the law, ICE has developed the ICE Mutual Agreement between Government and Employers (IMAGE) a new voluntary corporate outreach program aimed at strengthening overall hiring practices in the workplace. This outreach program emphasizes enhanced employer compliance through corporate due diligence, training and sharing of best practices. It also provides employers with a comprehensive tool to avoid immigration violations within their own company and to impact their industry and change the culture of tolerance for those who employ illegal workers.

IDENTITY AND BENEFIT FRAUD

Despite these efforts, the growing prevalence of counterfeit documents interferes with the ability of legitimate employers to hire lawful workers. In short, the employment process cannot continue to be tainted by the widespread use and acceptance of fraudulent identification documents.

Document fraud, or the manufacturing, counterfeiting, alteration, sale and/or use of identity and other fraudulent documents to circumvent immigration laws or engage in other criminal activity, is what many people think of when they hear about immigration related fraud. The sophistication of document fraud schemes has increased with new

technology. In the past, the tools of the trade were typewriters and pieces of plastic. Today, document forgers are using computer software and high-resolution digital scanners to ply their trade. The introduction of the computer has allowed some producers to create very high quality fraudulent documents.

Immigration benefit fraud is the knowing and willful misrepresentation or omission of a material fact on a petition or application to enter, work, or reside in the United States. If this type of fraud goes undetected, the perpetrator could fraudulently receive lawful immigration status and a genuine identity document issued by U.S. Citizenship and Immigration Services (USCIS). Obtaining a genuine identity document is immensely valuable to illegal aliens, criminals, and terrorists, since it allows them access to our borders and the interior of the United States. Immigration benefit fraud is also a highly lucrative crime, with perpetrators earning thousands or even tens of thousands of dollars for a single fraudulent application.

These cases are complex and challenging to investigate and often involve sophisticated schemes that cater to a large number of aliens and involve multiple coconspirators. ICE investigators have found that violators in benefit fraud schemes include attorneys, immigration consultants and business executives drawn by the profits they can reap. Criminal organizations are also using the Internet more frequently to market fake documents and immigration benefits to a larger audience of customers. These crimes require substantial resources to investigate and prosecute, since our cases do not stop with the prosecution. Through our partnership with USCIS, we not only seek to stop the

individuals facilitating these fraud schemes, but we also then attempt to identify those that received benefits to which they were not entitled.

Many of our investigations uncover fraud violations linked to other federal, state and local crimes. Over the past several years, the number of benefit fraud and document fraud investigations launched by ICE has increased. So have the number of criminal indictments, arrests, and convictions in these cases. Given our broad authorities, ICE is in a unique position to investigate these cases and successfully prosecute the perpetrators. Furthermore, ICE brings to this effort the expertise of our Forensic Document Laboratory (FDL), recognized as one of the premier fraudulent document analysis facilities in the world. ICE also utilizes the services of our Cyber Crimes Center to investigate any Internet-related aspects of document and benefit fraud casework.

In April 2006, ICE announced the creation of 11 new Document and Benefit Fraud Task Forces (DBFTFs), as one of the primary methods to eliminate vulnerabilities within the immigration process. Modeled after and built upon the successes of the Eastern District of Virginia Immigration and Visa Fraud Task Force, the DBFTFs detect, deter, and disrupt criminal organizations and individuals that pose a threat to national security and public safety through the perpetration of document and benefit fraud schemes. The task forces are built on strong partnerships with prosecutors from the Department of Justice as well as federal, state, and local law enforcement officers; they improve inter-agency communication, increase efficiency, and act as a force multiplier in joint anti-fraud efforts. ICE has formally announced these task forces in Atlanta, Boston, Dallas, Denver,

Detroit, Los Angeles, Newark, New York, Philadelphia, Saint Paul, and Washington, D.C., and we anticipate announcing DBFTFs in other cities in the near future.

The force multiplying effect of these task forces enables ICE and our partners to focus our resources and dismantle larger organizations. For example, an investigation conducted by our SAC Washington, D.C. task force has resulted in the closure of seven document mills, the seizure of more than 10,000 documents, the arrest of 195 aliens, and the prosecution of 60 people. As of June 26, 2006, there were more than 250 DBFTF investigations nationwide, including cases from ICE offices with a formal DBFTF and from those working cases through informal partnerships with other law enforcement agencies.

A good example of this partnership occurred here in San Diego on March 14, 2006 when ICE agents arrested Raymundo Navarro and charged him with seventeen counts of “Manufacture, Distribution or Sale of False Citizenship or Resident Alien Documents,” in violation of Section 113 of the California Penal Code. On April 25, 2006, ICE agents from my office arrested Alberto Vinalay and Jose Aguilar-Hojeda on this same state charge. Shortly thereafter, on May 3, 2006, agents from my office arrested Eduardo Paxtor, who was selling fraudulent identity documents out of the market where he worked as a butcher. In most of these cases, ICE worked closely with the Social Security Administration, Office of the Inspector General, and the District Attorney’s Office to effectuate the arrests. We value the relationships that we have developed with our fellow law enforcement officers and continue to coordinate with them.

Our responsibility at ICE is to do everything we can to enforce our laws, but enforcement alone will not solve the problem. Accordingly, the President has called on Congress to pass comprehensive immigration reform that accomplishes the following objectives: strengthen border security; ensure a comprehensive interior enforcement strategy that includes worksite enforcement; establish a temporary worker program; and address the population of illegal immigrants already in the United States. Achieving these objectives will dramatically improve the security of our infrastructure and reduce the employment magnet that draws illegal workers across the border. We need to accomplish this with the recognition and intention of avoiding the mistakes that accompanied the 1986 legislation.

ICE is dedicated to this mission and our agents are working tirelessly to attack the egregious unlawful employment of undocumented aliens that subverts the rule of law. We look forward to working with this Committee in our efforts to secure our national interests. Thank you for inviting me and I will be glad to answer any questions you may have at this time.